

REMARKS

Applicants acknowledge with appreciation the courtesy extended by Examiner Maiorino during the telephone interview with the undersigned on August 13, 2004.

The Examiner's allowance in the Office Action of claims 28 and 30 is acknowledged with appreciation. During the Interview, the rejection of independent claims 11, 19 and 29 was discussed.

As pointed out during the Interview, with respect to claim 11, this claim recites inter alia an actuator movable in a first direction to move the tines from the retracted to the first deployed position and movable in a second direction to move the tines to a second deployed position where the tines are advanced further from the elongated member than in the first deployed position. The claim further recites that the movement of the actuator in the second direction is different than the first direction. As discussed, neither Miller (6,432,092) nor Cuschieri (6,730,061) teach or suggest this feature. These patents lack the two deployed positions and the actuator moving in different directions to move the tines to the different deployed position. Withdrawal of the 35 U.S.C. 102 rejection is respectfully requested as claim 11 is believed to distinguish over the prior art.

Claims 12-16 depend from claim 11 and are therefore believed patentable for at least the same reasons that claim 11 is believed patentable. Withdrawal of the 35 U.S.C. 102 rejection of these dependent claims is respectfully requested.

With respect to claim 19, it was discussed how this claim recites inter alia an actuator actuable to a first position to move the tines from a retracted position to a first deployed position and movable to a second position to move the tines from a retracted position to a second deployed position. The actuator, as now claimed, moves to the second position without passing through the first position. This language clarification reflects the discussion in the Interview. In Cuschieri and Miller, to the extent the needles move to different positions, this is achieved by moving the actuator through or past the first position. Consequently, claim 19 is believed to distinguish over the prior art and withdrawal of the 35 U.S.C. 102 rejection is respectfully requested.

With respect to claim 29, it was discussed that this claim recites inter alia an actuator actuable to a first position to move the tines from a retracted position to a first deployed position and actuable to a second position to move the tines from the first deployed position to a second deployed position extending further from the elongated member and a retention member retaining the tines in the first deployed position and in the second deployed position. The claim further recites that the retention member is disposed internal of the housing and interacts with the slidable actuator to retain the tines in the first and second deployed positions and the actuator includes a flexible member formed by a cutout in a body of the actuator which is engagable with the retention member. No such structure is disclosed or suggested in Miller or Cuschieri. Neither the retention in two deployed positions nor the cutout recitation is disclosed in these


patents. Consequently, claim 29 is believed to distinguish over the prior art and withdrawal of the 35 U.S.C. 102 rejection is respectfully requested.

During the Interview, the objection to the drawings was also discussed. The undersigned pointed out that the features of the retention members and the movement of the actuator were adequately disclosed in the drawings. The Examiner agreed the features were shown and withdrawal of the drawing objection is respectfully requested.

The present application is now believed in condition for allowance. Prompt and favorable reconsideration of this application is respectfully requested. The Examiner is invited to contact the undersigned should the Examiner believe it would expedite prosecution.

Respectfully submitted,

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